

In The Matter Of:
MONIQUE SYKES, et al., v.
MEL S. HARRIS AND ASSOCIATES

June 27, 2011

SOUTHERN DISTRICT REPORTERS
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MONIQUE SYKES, et al., v.
MEL S. HARRIS AND ASSOCIATES

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1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK -----x			1 over several discovery matters items.		
2			2 THE COURT: Let's just go through them,		
3 MONIQUE SYKES, et al.,			3 MS. WILNER: Sure.		
4 Plaintiffs,			4 THE COURT: Identify anything that's still outstanding		
5 v.	09 CV 8486 (DC)		5 just one by one. What's the first one?		
6 MEL S. HARRIS AND ASSOCIATES LLC, et al.,			6 MS. WILNER: The first one has to do with some		
7 Defendants.			7 electronic discovery requests that we had made, one to the Mel		
8 -----x			8 Harris defendants and one to the SamSERV defendants. Both sets		
9	New York, N.Y. June 27, 2011 4:46 p.m.		9 of defendants have electronic databases that contain		
10			10 information that's extremely important to our case. It		
11 Before:			11 includes information on the people that they sued, the methods		
12 HON. DENNY CHIN,			12 of service, their applications for a default judgments, the		
13 District Judge			13 amounts that they were able to collect, the methods of		
14 APPEARANCES			14 collection. All of this information is stored in electronic		
15 COUNSEL FOR PLAINTIFFS:			15 databases. It is easily retrievable and is not burdensome to		
16 CLAUDIA WILNER, NEDAP			16 produce to us, and we really need to information to move		
17 JOSH ZINNER, NEDAP			17 forward with our case.		
18 SUSAN SHIN, NEDAP			18 THE COURT: OK, what's the objection?		
19 MATTHEW D. BRINCKERHOFF, Emery Celli Brinckerhoff & Abady, LLP			19 MS. WILNER: Well, we haven't --		
20 CAROLYN E. COFFEY, MFY Legal Services Incorporated			20 THE COURT: No, no, what's the objection.		
21 KAUFMAN DOLOWICH VOLUCK & GONZO LLP			21 MR. SCHER: Your Honor, Brett Scher on behalf of the		
22 Attorneys for Mel Harris Defendants			22 Mel Harris defendants.		
23 BRETT A. SCHER			23 THE COURT: Yes.		
24 McELROY DEUTSCH MULVANEY & CARPENTER LLP			24 MR. SCHER: The first objection we have is with		
25 Attorneys for Leucadia Defendants			25 respect to the scope of Rule 23 we talk about the Dziennik		
LEWIS H. GOLDFARB					
BABCHIK & YOUNG LLP					
Attorneys for SamSERV Defendants					
JORDAN SKLAR					
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1 (In open court)			1 case, which talks about the scope of what is discoverable		
2 THE COURT: Since there are so many of you, just			2 before certification. And the issue here is that plaintiffs		
3 identify yourself when you speak.			3 are looking for putative class member identities and documents.		
4 THE DEPUTY CLERK: Sykes versus Harris, civil cause			4 With respect to my clients, what they are talking		
5 for conference. If all the parties could state their			5 about, based on their definition of the class, is 120,000 legal		
6 experiences and who they represent, please.			6 files, attorney-client files, pertaining to every case that my		
7 MR. BRINCKERHOFF: Matthew Brinckerhoff for the			7 clients that my clients have essentially represented Leucadia		
8 plaintiffs.			8 in the New York City court system over the last five or six		
9 MS. WILNER: Claudia Wilner for the plaintiffs.			9 years. We think this goes well beyond the scope of what's		
10 MS. COFFEY: Carolyn Coffey for the plaintiffs.			10 discoverable under Rule 23.		
11 MS. SHIN: Susan Shin for the plaintiffs.			11 THE COURT: I don't remember. Are we just doing class		
12 MR. ZINNER: Josh Zinner for the plaintiffs.			12 discovery now or are we doing all discovery? Have we addressed		
13 THE COURT: All right.			13 that issue?		
14 MR. GOLDFARB: Lou Goldfarb for the Leucadia			14 MR. SCHER: Your Honor, at the outset of the case, I		
15 defendants.			15 believe there was an application made by Mr. Goldfarb to		
16 MR. SKLAR: Jordan Sklar for the SamSERV defendants.			16 bifurcate, which your Honor denied at that point. So the issue		
17 MR. SCHER: And Brett Scher on behalf of the Mel			17 we're dealing with here is that, even I believe even under Rule		
18 Harris defendants.			18 23, even with the class and merits discovery, we have given		
19 THE COURT: All right. We had some discovery issues.			19 them everything in terms of policies and procedures that deal		
20 Who wants to go first?			20 with not just the plaintiffs but everybody, but when you're		
21 MS. WILNER: I will, your Honor. Thank you.			21 talking about actually producing 120,000 legal files -- and		
22 This is Claudia Wilner of NEDAP on behalf of the			22 it's after they've already moved for class certification.		
23 plaintiffs.			23 THE COURT: It sounds like they're only asking for the		
24 THE COURT: Yes.			24 electronic files. In other words, you don't have to print out		
25 MS. WILNER: And we had sent a letter to the Court			25 120,000 files; you just give them the data.		

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1	MR. SCHER: The problems is those, what they call		1	MR. SCHER: Based on even what's in their letter to	
2	electronic files, are legal files. My client's law firms, they		2	the Court, your Honor, I'm most concerned -- on page 2, where	
3	maintain everything electronically; that has all the		3	they're saying they want every document that we have in these	
4	communications with clients, it has their internal memorandums,		4	electronic files, including efforts to collect on the	
5	it has everything --		5	unlawfully-obtained judgments, including methods of collection	
6	THE COURT: It sounds like you're saying there are		6	and amounts taken from class members, I think we're getting	
7	privileged materials in there, work product materials, and so		7	beyond --	
8	it's not so easy as pushing a button; you'd have to go through		8	THE COURT: That does sound too broad, because it	
9	and sort out the privileged materials?		9	could pick up things that are privileged, communications,	
10	MR. SCHER: Exactly correct, your Honor. And we don't		10	et cetera.	
11	know what size class we're dealing with because they've gone		11	The parties are directed to meet and confer to see	
12	well beyond what's alleged in the conspiracy here, between the		12	whether there is a way of sorting electronically so that	
13	SamSERV defendants and the sewer servers. They've now asked		13	certain data fields could be pulled out without the need to	
14	for my clients' entire files, well beyond using SamSERV, who is		14	review each file individually for privilege and	
15	the alleged process server that engaged the sewer servers.		15	confidentiality. If there is a factual disagreement, then	
16	THE COURT: Ms. Wilner, I'm concerned about ordering		16	you'll either have to submit something or you'll have to call,	
17	the production of things that could be privileged, and I am		17	we'll have to have a hearing or something; I don't know, I'll	
18	concerned about reviewing 120,000 files for privilege. Is		18	have to resolve the factual dispute if there is one.	
19	there some other way of doing this?		19	If it can't be done without the extraordinary effort	
20	MS. WILNER: Well, your Honor --		20	of somebody going through 120,000 files, then someone will have	
21	THE COURT: I think, first of all, certainly for all		21	to pay for that; I would think in the first instance it ought	
22	the named plaintiffs it should be done.		22	to be the plaintiffs if they really want it. So I think you	
23	MR. SCHER: That's been done, your Honor.		23	should meet and confer try to work it out.	
24	THE COURT: OK. My only other thought is whether you		24	Yes, sir?	
25	can have discussions about whether there is a way to sort, so		25	MR. BRINCKERHOFF: Judge, if I may, I just want the	
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1	that you can sort out certain things that would not be		1	Court to understand that we have gone about this discovery in a	
2	privileged. For example, you could sort out things like		2	very deliberative way. The first thing we did was we did a	
3	pleadings, affidavits; I don't know, it seems to me that that		3	30(b)(6) deposition of the custodian of all the records at Mel	
4	is the kind of thing which wouldn't be burdensome if it would		4	Harris, which is the prime depository. And the request that we	
5	not require reviewing 120,000 files. And the other possibility		5	made was specific to the database information, not to the paper	
6	is to depose a person with knowledge on how these things are		6	records that are behind it, but to the database information.	
7	kept and see what the person says, unless you can work it out		7	And, in fact -- and the reason I'm raising this, I think we can	
8	informally.		8	short-circuit this a little bit -- what we got in response,	
9	MS. WILNER: Your Honor, if I may, we already did have		9	with no privilege log or any assertion of privilege, were the	
10	that deposition and what we're seeking is specifically -- most		10	exact pieces of data that we requested for each and every one	
11	of what we're seeking is data fields that have a specific		11	of the collection efforts made against the individual	
12	information in it, such as an amount or an address. I don't		12	plaintiffs. There is no indication from that response that	
13	think that there is information in those particular data fields		13	they're claiming any privilege with respect to that information	
14	that's subject to privilege. We haven't asked for --		14	that was produced in an Excel spreadsheet that was exported	
15	THE COURT: So you're willing to narrow the request to		15	from their database.	
16	certain data fields?		16	All we're seeking at this point to evaluate are those	
17	MS. WILNER: The request has already been narrowed to		17	same data fields, the same information, the ticks and the	
18	certain data fields. What they have produced to us for the		18	little lines of text that were already produced without any	
19	individual plaintiffs are those fields, and now what we're		19	claim of privilege. So it's a little hard to understand why	
20	looking for is that information, not for the individual		20	they could be claiming that a review or an assertion of	
21	plaintiffs but for the class members.		21	privilege is necessary when they have already produced this	
22	THE COURT: Mr. Scher, I'm hearing that the plaintiffs		22	information with no such assertion.	
23	think that they can narrow it to certain data fields that would		23	And we've been trying to keep it very --	
24	not elicit any privileged or confidential materials. Is that		24	THE COURT: Is there a problem with producing the same	
25	not so?		25	information for the others electronically?	

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1	MR. SCHER: Yes, your Honor. This deals with		1	these improper collection efforts on a vast scale, for hundreds	
2	financial and private information with respect to plaintiffs,		2	or a hundred thousand people, and that they do this	
3	putative plaintiffs, who the plaintiffs' counsel doesn't		3	electronically --	
4	represent. And I think that goes to the whole issue of the		4	THE COURT: Fair enough. I think that's reasonable.	
5	cases that we cited that talk about that the discovery process		5	Have that same discussion. Plaintiffs would be willing not to	
6	is not intended to be a mechanism for plaintiffs to go out and		6	approach any of these other unnamed class members, potential	
7	seek out new plaintiffs to add to the lawsuit.		7	class members, without giving the defendants a chance at least	
8	THE COURT: They are different issues, different		8	to come back to court to object. So that's another condition	
9	objections, I'm hearing: One is burdensomeness; two is, there		9	that you can add to your discussion.	
10	may be privileged or confidential materials; and three, what		10	What's next? So you'll come back to me on this if you	
11	you're really saying is relevancy and that they are trying to		11	need my help.	
12	come up with more plaintiffs. So I'm not quite sure which ones		12	MS. WILNER: The next issue has to do with the SamSERV	
13	you're really pressing. Are you really pressing a		13	defendants. And we had requested copies of logbooks and also	
14	burdensomeness argument if they limit it to the data fields		14	records of traverse hearings that were involving the individual	
15	that they have already gotten information on for the named		15	process servers. And SamSERV has refused to produce that	
16	plaintiffs?		16	information. The logbooks are as essentially a paper record	
17	MR. SCHER: I think it does because one of those		17	that the individual process servers keep, that record all their	
18	fields is what we call the attorney notes field, which we did		18	services. And of course because we have alleged a pattern and	
19	produce for the four named plaintiffs but not with the		19	practice of sewer service, the information that would address	
20	anticipation that it would be the same demand as to 120,000		20	that that's not in the electronic databases is in these	
21	people that they didn't even represent. So that is one of the		21	logbooks.	
22	fields that was given to them, but that is --		22	Similarly, with the traverse hearings, if there are	
23	THE COURT: What if we eliminated attorney notes?		23	documents pertaining to traverse hearings --	
24	MR. SCHER: It depends on what they're asking for		24	THE COURT: For how many individuals?	
25	other than that. That's the main thrust of --		25	MS. WILNER: Well, we've asked for the logbooks and	
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1	THE COURT: Did you give me a printout of what you've		1	traverse hearings that relate to the individual process server	
2	gotten?		2	defendants in the case.	
3	MR. BRINCKERHOFF: We could. We could give you the		3	THE COURT: How many?	
4	Excel file that our expert --		4	MS. WILNER: I believe there are four defendants.	
5	THE COURT: Do this: Try to work it out. If you		5	THE COURT: OK, what's the objection?	
6	can't work it out, then submit a copy of what it is that you		6	MR. SKLAR: Well, the objection there, starting off,	
7	got already and you're telling me that you want the equivalent		7	is it's overbroad because it's not limited to a potential class	
8	of for everyone else, and then you can respond on what the		8	and that that's not limited to Mel Harris; it's all possible	
9	additional objections there would be to this. Try to narrow it		9	clients that these process servers did work for. SamSERV	
10	as much as you can, and then I'll rule quickly on that issue if		10	itself, the corporate defendant, doesn't keep the logbooks,	
11	you can't work it out.		11	That's the responsibility of the individual named process	
12	MR. BRINCKERHOFF: I think that we can certainly do		12	servers, most of whom don't work for SamSERV anymore; and I	
13	that, Judge. Insofar as there is any kind of an objection		13	believe none of them have those logbooks. I can try to clarify	
14	based on attempting to solicit plaintiffs or anything of the		14	that as best I can.	
15	sort, which I don't think there's any basis for, we'd be happy		15	As far as the claim there would be information in	
16	for the Court to order us not to reach out to any witnesses		16	there that would not be available elsewhere, I respectfully	
17	until further notice or anything of that sort, if that's a real		17	submit that's not correct. All those logbooks record is the	
18	concern. I think the only real issue here is whether or not		18	data that ultimately --	
19	maybe there is something that might be privileged.		19	THE COURT: Are you saying the logbooks don't exist?	
20	THE COURT: And why are you looking? Why do you want		20	MR. SKLAR: My understanding is the individual process	
21	to say all of this data? And can you really process it?		21	servers don't have these logbooks.	
22	MS. WILNER: Well, yes, we believe we can process it.		22	THE COURT: And corporate defendants do not have them?	
23	And what we're really looking for is data in the patterns that		23	MR. SKLAR: No. They're independent contractors.	
24	we think are there that would prove our case. We've talked		24	It's their responsibility to hold onto them.	
25	about defendants having a pattern and practice of engaging in		25	THE COURT: I think you should make a written	

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1 representation --

2 MR. SKLAR: OK.

3 THE COURT: Actually, the representation should come

4 from someone at the client under oath, who will say, if it's

5 true, that the corporate defendants do not have the logbooks,

6 that the logbooks were kept in the possession of the individual

7 process servers; and, if you are representing the individual

8 process servers, confirm with each of them, and they should

9 provide a sworn statement that they do not have any logbooks.

10 MR. SKLAR: Absolutely, your Honor. But as I say, the

11 information that's in there would be the exact same information

12 that is in the electronic database which they have, which is in

13 the affidavit of service.

14 THE COURT: It doesn't matter whether it's

15 duplicative. I think they would be entitled to see them if

16 they exist. If you're saying they do not exist, then let's not

17 fight about it. Make the representations in writing. When the

18 individual process servers are deposed, if the plaintiffs think

19 that they are lying about the existence of these logbooks and

20 they have something to point to, then they can come back to me

21 and I'll take a look at it. But there's no sense fighting over

22 it if their position is that they do not exist. If they say

23 that, then it would be a fair game at deposition to inquire

24 into did they ever exist, if so, what happened to them, when

25 were they destroyed or tossed or whatever; and then I can see.

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1 But let's make sure that they do a search and can confirm that

2 they do not have them.

3 MR. SKLAR: Fair enough.

4 Also, as far as the traverse hearing, again, it's not

5 limited to the Mel Harris defendants and --

6 THE COURT: Any objection to limiting it to traverse

7 hearings involving Mel Harris Associates?

8 MS. WILNER: Well, yes, your Honor, because the

9 purpose of requesting the information about the traverse

10 hearings is to gain information about the individual process

11 servers' practices. And their normal practices when they serve

12 process are the same, whether it's Mel Harris or somebody else

13 that they're serving for.

14 THE COURT: Do you have the resources to process all

15 this information?

16 MS. WILNER: Your Honor, we believe there are not very

17 many traverse hearings, because they're rarely held.

18 THE COURT: For what period of time did you go back?

19 MS. WILNER: I believe we went back to 2006, which is

20 the period of the class, the proposed class.

21 THE COURT: Is there a record kept -- do we know what

22 we're talking about -- in terms of volume?

23 MR. SKLAR: I don't know, your Honor. I don't think

24 there's a button, that you can press a "traverse hearing"

25 button and spit it out.

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1 THE COURT: Tell me what you are asking for with

2 respect to traverse hearings.

3 MS. WILNER: Well, we had asked for all documents that

4 they have that pertain to them, so that would include

5 information just about whether a traverse hearing was scheduled

6 as well as if they happened to have a transcript of the

7 traverse hearing, which they may be unlikely to have. But even

8 knowing how many hearings were scheduled over a period of time

9 would be helpful to our case.

10 MR. SKLAR: Again, I don't see how that is at all

11 relevant or reasonably calculated to lead to any sort of

12 information about whether, if some other client has a policy of

13 pressing traverse hearings and another client has a policy of

14 pressing for traverse hearings only on Tuesday and Mel Harris

15 has a different policy, how that's at all relevant to this

16 case, the members of the class.

17 MS. WILNER: The traverse hearing --

18 THE COURT: My concern is, unless there's a file kept

19 on traverse hearings, how do you figure out how many traverse

20 hearings there were, when they occurred?

21 MR. SKLAR: If I may, your Honor, why don't we fold

22 that into the meet-and-confer and let me talk to my client and

23 try and get some answers on that subject.

24 THE COURT: Yes, some of this should have been done

25 already.

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1 Let me give you some general thoughts:

2 In general, I think the issue of the number of

3 traverse hearings that are conducted is relevant. If many of

4 these cases result in traverse hearings, I think that could be

5 relevant, could lead to relevant evidence. I think I'm a

6 little skeptical about non-Mel Harris. But I think SamSERV

7 needs to provide some information as to how these things are

8 logged, whether there is a reference, whether there is any kind

9 of collection of data relating to traverse hearings. In other

10 words, I don't know that -- you'd have to almost look through

11 every file to see whether there was a traverse hearing -- and

12 I'm sympathetic to that -- but maybe there's a master calendar,

13 there's a calendar kept of when these hearings are scheduled.

14 So I'm inclined to rule that much of this is relevant.

15 I am a little bit sympathetic to whether it would create too

16 much of a burden. It depends on the volume. I think that the

17 SamSERV defendants need to provide some information about

18 recordkeeping for these kinds of things. I don't know if there

19 would be a mechanism for keeping track of this. Expenses

20 maybe? I don't know if there's a record for expenses related

21 to traverse hearings. But if there was a way of doing it, that

22 ought to be done. So hopefully that gives you some guidance.

23 MR. SKLAR: Thank you, your Honor.

24 THE COURT: OK, what's next?

25 MS. WILNER: Your Honor, we requested a copy of an

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1 Access database that's maintained by the SamSERV defendants
2 that concerns service of process. So all of the records of
3 service that they've done for the Mel Harris defendants are in
4 an Access database. Again, it would be easy for them to make a
5 copy of this database for the relevant time and produce it to
6 us, and they have refused to do that.

7 MR. SKLAR: Again, we're getting into a similar issue
8 that, if I'm not mistaken -- I apologize, I don't know that the
9 request was limited to the Mel Harris defendants; I think it
10 was all process servers, for everybody under the sun, which I
11 think is really wholly improper and overbroad. And, again, all
12 it is --

13 THE COURT: Is that a relevancy objection?

14 MR. SKLAR: Relevance and burdensomeness.

15 THE COURT: If it's just a database, how is that
16 burdensome?

17 MR. SKLAR: Because then I would go with the
18 relevance, your Honor, is that --

19 THE COURT: Is there anything other than relevance?

20 MR. SKLAR: No, your Honor. I believe it is just a
21 database, and it just lists of names and dates.

22 THE COURT: Yes?

23 MS. WILNER: The database would contain names, dates,
24 also the type of service that's alleged and --

25 THE COURT: Why do you need it for others if Mel

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1 Harris is not involved?

2 MS. WILNER: Actually, the request was for electronic
3 documents concerning service of process for the Mel Harris
4 defendants.

5 THE COURT: OK, for this, you're limiting it to Mel
6 Harris?

7 MS. WILNER: It is limited to Mel Harris already.

8 THE COURT: The objection is overruled. SamSERV shall
9 provide the database in question for all service done on behalf
10 of Mel Harris purported to be done on behalf of Mel Harris.

11 MR. SKLAR: And the time period?

12 THE COURT: For the period of the class. Anything
13 else? Next.

14 MS. WILNER: Yes, your Honor, the Mel Harris
15 defendants have produced a series of documents that have
16 crucial information redacted. So this comes up in, for
17 example, the purchase and sale agreements for the portfolios of
18 the accounts where they have omitted information such as the
19 purchase price for the portfolios, the amount that it would
20 cost them to obtain documentation of the debts if they're even
21 able to obtain documentation of the debts, and information like
22 that.

23 Now, this information is relevant to our claims
24 because we have alleged that they have this scheme to produce
25 these debts cheaply, to not spend very much money. The

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1 financial aspects are crucial --

2 THE COURT: The purchase and sale agreements are to
3 buy groups of debt?

4 MS. WILNER: Right, and the individual plaintiffs'
5 debt is one debt among many purchases that are happening all at
6 the same time.

7 THE COURT: They're not actually getting the
8 underlying documents; they're just buying --

9 MS. WILNER: A spreadsheet, correct.

10 THE COURT: -- a spreadsheet and the right to pursue
11 those?

12 MS. WILNER: Right.

13 THE COURT: And then these things say that if you want
14 individual documentation, it would cost you X dollars?

15 MS. WILNER: They may say that. Sometimes they say
16 that no further documentation is available, but in particular,
17 what we're talking about is where they say exactly that, that
18 if you want more documentation, you can get this type of
19 documentation --

20 THE COURT: OK, what's the objection?

21 MR. SCHER: Your Honor, the primary objection we have
22 is that with respect to the purchase and sale agreements,
23 they're contracts with third parties and they have
24 confidentiality clauses in which -- that's why they were
25 redacted, because we were told that we can't -- by these third

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1 parties -- you're not to give up this information. We tried to
2 accommodate the plaintiffs by giving them at least the
3 agreements in the redacted form, but without the court order --

4 THE COURT: All right, the objection is overruled.
5 The Mel Harris defendants are hereby ordered to produce the
6 redacted information from the purchase and sale agreements.

7 Next?

8 MS. WILNER: Your Honor, we have requested from all of
9 the defendants that they produce privilege logs if indeed they
10 are withholding documents on the basis of privilege, and they
11 have not done so.

12 THE COURT: Privilege logs, they should be produced if
13 they're required to be produced.

14 MR. SCHER: With respect to Mel Harris, other than the
15 issue that we've discussed earlier today, I don't think we've
16 claimed privilege as to any documents. I can put that on
17 paper. I'm not sure we asserted it anywhere else.

18 THE COURT: All right.

19 MR. GOLDFARB: On behalf of the Leucadia defendants, I
20 have to go back and check, your Honor. I don't think we
21 claimed privilege but we may have. And we'll certainly provide
22 the logs very promptly.

23 MR. SKLAR: And, again, on behalf of the SamSERV, I
24 don't believe any documents are withheld.

25 THE COURT: If any documents have been withheld by

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1	either side on the basis of privilege, including attorney work		1	it in separate letters or what --	
2	product, a privilege log shall be provided forthwith. It		2	MR. GOLDFARB: We prefer just a separate letter, a	
3	should be done.		3	five-page letter, that lays out our arguments as to why	
4	Depending on what happens with the database, talk		4	basically the standard for commonality has been changed by the	
5	about it; maybe there's a way to summarize the redactions, if		5	Wal-Mart case.	
6	necessary, but you can include that in your discussions.		6	THE COURT: And when are your papers due?	
7	OK, what's next?		7	MR. BRINCKERHOFF: I believe it's July 22nd. So we	
8	MS. WILNER: Your Honor, there is just one more thing		8	can incorporate it in our reply obviously. And we don't have	
9	that we wanted to clarify.		9	an objection to -- is it three?	
10	THE COURT: Yes.		10	MR. SCHER: Just one combined letter.	
11	MS. WILNER: That is that many of the objections that		11	MR. BRINCKERHOFF: One combined five-page letter	
12	defendants have been making to our discovery requests are		12	sounds fine. Obviously we have a different view as to the	
13	objections to providing information that relates to people		13	significance of the Wal-Mart decision.	
14	other than the four named plaintiffs. I know that we've talked		14	THE COURT: I want to hear both views.	
15	about that some today, but we just wanted a ruling or		15	MR. BRINCKERHOFF: And you will hear them both.	
16	clarification that information that pertains to class members		16	THE COURT: The defendants can submit a joint letter	
17	other than the named plaintiffs is relevant and discoverable.		17	addressing the impact, if any, of Wal-Mart on the pending	
18	THE COURT: Yes?		18	motions. When can you do that?	
19	MR. GOLDFARB: Yes, your Honor. We object to that.		19	MR. GOLDFARB: One week, your Honor.	
20	Our view of the law under Rule 23, is that there is no class at		20	THE COURT: OK. I'll do better than a week: Eight	
21	this moment in time, and the plaintiffs are not entitled to get		21	days. A week is the 4th of July, so July 5th. And are you all	
22	detailed information, contact information, regardless of what		22	right with your current date or do you need a few more days	
23	they're going to use it for, about putative class members. And		23	now?	
24	there's case law in support of that.		24	MR. BRINCKERHOFF: One more week, Judge.	
25	THE COURT: Well, I think we've addressed that to some		25	THE COURT: Is there an objection if I give them	
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1	extent. The plaintiffs would agree not to make any efforts to		1	another week since they have to wait for your letter?	
2	contact any putative class members without permission from the		2	MR. SCHER: No, your Honor.	
3	Court. So I think all that would be left would be either a		3	MR. GOLDFARB: No, your Honor.	
4	burdensomeness or a relevancy argument. And I would say I did		4	THE COURT: OK, the plaintiffs can have an additional	
5	not bifurcate discovery, so discovery hasn't been bifurcated;		5	week for their reply, and it will be teed up. Maybe it will be	
6	on the other hand, I am sensitive to the issue of producing in		6	one of the first decisions applying Wal-Mart or not applying	
7	hard copy, for example, 120,000 files where the case has not		7	Wal-Mart, we'll see.	
8	yet been certified. And it may be that some of these things		8	OK, any other issues today?	
9	we'll have to save until I decide the motion, but I have not		9	MS. WILNER: Yes, your Honor. I think it would be	
10	blanketly ruled anything off limits because discovery has not		10	helpful for the parties to have some deadlines in terms of the	
11	been bifurcated. But hopefully, the parties will work with		11	actual production of the discovery that you ordered produced,	
12	each other and try to use some common sense in dealing with		12	particularly the SamSERV database.	
13	these things.		13	THE COURT: When can you produce the SamSERV database?	
14	Have the parties -- I haven't read Wal-Mart, but I		14	MR. SKLAR: I'm not sure what the technological side	
15	assume that's the subject of some discussion?		15	of that -- what is involved, so I would say three weeks.	
16	MR. GOLDFARB: Your Honor, we would request leave to		16	THE COURT: All right, three weeks is reasonable.	
17	file a very brief, five-page, letter setting forth the		17	Three weeks. And I think the other things are still under	
18	implications of the Wal-Mart ruling on the pending class cert.		18	discussion. So meet soon and work out the deadlines as well.	
19	THE COURT: You filed your briefs when?		19	What's the outside discovery cutoff in the case? I	
20	MR. GOLDFARB: We filed our opposition briefs the 13th		20	don't remember.	
21	of June.		21	MR. GOLDFARB: September, second week in September, I	
22	THE COURT: Would it make sense to let you withdraw		22	believe.	
23	those briefs and give you like a week or so to supplement, or		23	THE COURT: Do you want a little more time?	
24	do you want to incorporate it? Obviously, I want to hear what		24	MR. BRINCKERHOFF: I think we're going to need more	
25	the parties think on Wal-Mart, of Wal-Mart, and whether we do		25	time. Our plan, just so the Court understands, was to try to	

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1 be, as I said, efficient. And if we get these two databases,
2 the Mel Harris database and the SamSERV one, we're hopeful we
3 will need very little past that and we can conduct our
4 depositions and be done, but we can't really know that until we
5 get all the electronic information. So another month or so, I
6 think, is inevitably going to be needed even if things go
7 smoothly.

8 THE COURT: What do the defendants think?

9 MR. GOLDFARB: Your Honor, a lot will be affected by
10 the outcome of the class certification ruling.

11 THE COURT: Well, if I don't get it fully briefed
12 until the end of July, I'll do the best I can, but I don't know
13 that I can get it done by September.

14 MR. GOLDFARB: We're OK adding what plaintiffs are
15 seeking an additional month.

16 THE COURT: Does anyone have the date?

17 I'll issue is a scheduling order, but the idea is,
18 we'll extend discovery by about a month and unless the parties
19 need to see me, what I'll do is, we'll extend the date, which
20 should have been the same day as the discovery cutoff. We'll
21 extend the date of the next pretrial conference. And in part
22 it may depend on what's happening with the motion.

23 But I don't have much of a district court docket left.
24 The Second Circuit doesn't sit during the summer, so if you get
25 it in, I might be able to get to it although I start sitting

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1 again in late August. So try not to delay the class
2 certification papers, as that will hold things up.

3 OK, anything else today?

4 MR. GOLDFARB: No, your Honor.

5 MR. BRINCKERHOFF: No, Judge.

6 MS. WILNER: No, your Honor.

7 THE COURT: Is there any desire to talk settlement off
8 the record or no?

9 MR. SCHER: Your Honor, before we get into that, I
10 just wanted to confirm with counsel --

11 THE COURT: On the record?

12 MR. SCHER: Yes, still on the record.

13 This is with respect to subpoenas we had served. I
14 think we had an issue outstanding. I think we reached an
15 agreement with respect to the scope of -- they'll provide us
16 with carrier names and numbers, and we'll agree to limit the
17 subpoenas' scope and time frame. So I don't know if counsel
18 wants to put that on the record or --

19 MR. BRINCKERHOFF: Judge, I don't think it's
20 necessary. We're happy to do it if it helps the defendants in
21 some way. We did reach an agreement on that as well as -- the
22 Court may or may not remember -- there were five plaintiffs who
23 accepted Rule 68 offers of judgment and there was attorneys'
24 fees that were associated with that. You had extended, at our
25 joint request, the deadline to make a fee application, and

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1 we've just now reached an agreement, given all of the privilege
2 issues that are going to arise in producing time records in the
3 middle of the case, to hold any application for fees in
4 abeyance. And we're going to work out the language as to what
5 will trigger that, but we'll be submitting a letter to the
6 Court.

7 THE COURT: All right.

8 MR. SCHER: I don't know if the Court's ready, but we
9 can stipulate right now; I think we've all agreed that we don't
10 object.

11 MR. BRINCKERHOFF: I think our preference would be to
12 put in writing in a letter to the Court, or a writing amongst
13 ourselves so it's clear exactly what is.

14 THE COURT: That's fine. Work it out. It's better if
15 it's in writing, and it can either a stipulation which I can so
16 order, or it can be a letter which I can so order, whatever is
17 easier for all of you.

18 THE WITNESS: Thank you, Judge.

19 THE COURT: Anything else? Is there any desire to see
20 me off the record or no?

21 MR. SCHER: Defendants would have no objection.

22 MR. BRINCKERHOFF: We're happy to meet with the Court
23 at any time but --

24 THE COURT: Let's go off the record.
25 * * *